

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

436C0486

HOUSE BILL NO. 1090

Introduced by: Representatives Brown (Jarvis), Crisp, and Hunt and Senators Whiting, Everist, and Moore

1 FOR AN ACT ENTITLED, An Act to revise administrative procedures regarding the filing of
2 a notice of appeal, an application for a stay pending appeal, and the time for serving briefs.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-26-31 be amended to read as follows:

5 1-26-31. An appeal shall be taken by serving a copy of a notice of appeal upon the adverse
6 party ~~and, upon the agency which, and upon the hearing examiner, if any, who~~ rendered the
7 decision, and by filing the ~~same, or a certified copy,~~ original with proof of such service in the
8 office of the clerk of courts of the county in which the venue of the appeal is set, within thirty
9 days after the agency served notice of the final decision or, if a rehearing is authorized by law and
10 is requested, within thirty days after notice has been served of the decision thereon. ~~Service~~
11 ~~required by this section may be performed by registered or certified mail and is complete when~~
12 ~~the material to be served is deposited with the United States postal service.~~

13 Section 2. That § 1-26-32 be amended to read as follows:

14 1-26-32. Any agency decision in a contested case is effective ten days after the date of receipt
15 or failure to accept delivery of the decision by the parties. An application to the circuit court for
16 a stay of the agency's decision may be made only within ten days of the date of receipt or failure

1 to accept delivery of the agency's decision. ~~The court, may, within ten days of receiving an~~
2 ~~application for a stay of the agency's decision in its discretion, order a further stay, pending final~~
3 ~~decision of the court. Upon receiving a timely application for a stay and notice of hearing~~
4 ~~thereon, the court may enter a temporary stay pending a hearing on the application. Following~~
5 ~~a hearing, the court may order a further stay, pending final decision of the court.~~ The court, as
6 a condition to granting a stay, may require the appellant to furnish a bond or other such security
7 or order supervision as the court may direct to indemnify or protect the state or agency or any
8 person from loss, damage, or costs which may occur during the stay. This section does not apply
9 to determinations of benefits made by the Department of Labor pursuant to Title 61.

10 Section 3. That § 1-26-33.2 be amended to read as follows:

11 1-26-33.2. Unless otherwise ordered by the circuit court, the appellant shall serve ~~his~~ a brief
12 within thirty days after the delivery of the transcript of the contested case hearing to counsel for
13 the parties or to the parties if unrepresented by counsel or within thirty days after the ~~service of~~
14 ~~the notice of appeal upon the adverse party~~ agency record is transmitted to the circuit court
15 pursuant to § 1-26-33, whichever event occurs later. The appellee shall serve ~~his~~ a brief within
16 thirty days after the service of the brief of appellant, or in the case of multiple appellants, within
17 thirty days after service of the last appellant's brief. The appellant may serve a reply brief within
18 ten days after service of appellee's brief, or in the case of multiple appellees, within ten days after
19 service of the last appellee's brief. Pursuant to § 15-6-5(d), briefs ~~shall~~ may not be made a part
20 of the record.